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UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,  
Plaintiff,

v.

LOBSANG DARGEY,

Defendant.

CR NO.

**CR17-001TS2**

**INFORMATION**

The United States Attorney charges that:

**I. PRELIMINARY STATEMENT**

1. This matter involves defendant LOBSANG DARGEY's abuse of a federal immigration program that promotes foreign investment in this country, and DARGEY's misuse of the investment proceeds DARGEY collected from investors he recruited to the program. As discussed herein, DARGEY raised over \$150 million from foreign investors by representing to the investors and to the United States that DARGEY would use the investment proceeds exclusively to complete certain real estate projects in the Puget Sound area. DARGEY and others represented that the investment proceeds would be used in accordance with the requirements of the immigration program, including the requirement that each investor's full capital investment be used solely for job-creating

1 activities in the proposed projects. As a result of these representations, investors were led  
2 to believe that if they entrusted their money to DARGEY they would ultimately be  
3 entitled to permanent United States residency.

4 2. In fact, contrary to DARGEY's representations, and for his own personal  
5 benefit, DARGEY secretly funneled tens of millions of dollars in investor funds to uses  
6 not disclosed to the investors or to the United States. This included DARGEY's secret  
7 use of investor funds for DARGEY's personal real estate projects unrelated to the  
8 investors' projects, and DARGEY's secret use of investor funds to pay the costs of  
9 DARGEY's organizations, such as expenses incurred in promoting the investments. As  
10 DARGEY knew, his misuse of investor funds not only resulted in financial harm to  
11 investors, but also carried the potential to render the investors ineligible for the  
12 immigration benefits that DARGEY had represented would flow from the investments.

13 3. DARGEY's diversion of investor funds, coupled with his own failure to  
14 make tens of millions of dollars in promised financial contributions to the projects,  
15 resulted in gaping funding deficits for the investors' projects. DARGEY filled these  
16 deficits by raising tens of millions of dollars from a lender and a new equity investor.  
17 DARGEY, with the assistance of others, provided the lender and investor with fraudulent  
18 financial information, including altered bank statements and falsified balance sheets, to  
19 hide his misuse of immigrant investor funds and the resulting funding deficits. DARGEY  
20 also raised money for two new real estate projects, and planned to secretly divert the  
21 newly-raised funds to his original projects to further address the deficits.

22 4. DARGEY's fraud was brought to an end only when the United States  
23 Securities and Exchange Commission obtained injunctive relief, an asset freeze, and the  
24 removal of DARGEY's authority over the projects. As a result of DARGEY's conduct,  
25 United States Citizenship and Immigration Services ("USCIS") terminated DARGEY's  
26 role in the projects and rendered decisions unfavorable to his investors' immigration  
27 petitions.

## II. BACKGROUND

### A. The EB-5 Program

5. The United States administers a federal immigration program called the “Employment-Based Immigration Fifth Preference” program, which is more commonly known as the “EB-5” program. The EB-5 program is intended to promote economic growth in the United States, primarily through new job creation, by encouraging foreign investment in this country. The EB-5 program allows foreign nationals to obtain permanent United States residency (commonly known as “green card” status) by investing in qualifying American businesses. Investors who comply with program requirements initially receive a grant of conditional permanent residency status for a two-year period. After this period, the investor may petition for permanent residency.

6. To obtain an EB-5 visa, the investor must satisfy three primary program requirements: (1) the investor must invest at least \$1 million (hereinafter, the “capital contribution”) in the United States; (2) the capital contribution must be made in a qualifying business known as a “new commercial enterprise,” or “NCE”; and (3) the capital contribution must create or preserve full-time positions for at least 10 qualifying employees within two years. The minimum amount of the capital contribution is reduced from \$1 million to \$500,000 if the NCE is located in an area designated as a “targeted employment area,” which may be a rural or high-unemployment area. USCIS, a component of the United States Department of Homeland Security, administers the EB-5 program.

7. EB-5 investments are sometimes promoted by entrepreneurs seeking financing for projects such as real estate developments. These promoters sometimes establish “regional centers,” which are entities that promote EB-5 investments within a designated geographic area. To obtain regional center status, the promoter must provide USCIS with materials describing the kinds of commercial enterprises that may operate under the regional center, and the types of jobs that will be created either directly or

1 indirectly as a result of the investments. An immigrant investor may, but is not required  
2 to, invest in an NCE affiliated with a regional center.

3 8. Prospective immigrants who wish to participate in the EB-5 program must  
4 file "I-526" petitions with USCIS. An I-526 petition must establish that the immigrant  
5 will more likely than not satisfy EB-5 program requirements. For example, the petition  
6 must show that the immigrant has invested (or is in the process of investing) the required  
7 amount of funds in an NCE; that the funds come from a lawful source; and that the  
8 investment will more likely than not create at least 10 qualifying jobs in the United  
9 States.

10 9. To make these showings, immigrant investors typically provide USCIS  
11 with supporting materials, which may include a project business plan, a budget, and  
12 applicable offering materials. USCIS reviews and relies on these materials in  
13 determining whether the I-526 application should be granted. During the pendency of the  
14 I-526 petition, the proposed project must proceed, in all material respects, in the manner  
15 described in the I-526 petition and supporting materials. If the actual project materially  
16 diverges from the I-526 proposal before USCIS grants the petition and the immigrant  
17 becomes a conditional permanent U.S. resident, USCIS may deny the I-526 petition.

18 10. If USCIS approves an I-526 petition, the petitioner/immigrant receives  
19 conditional permanent residency for a two-year period. After two years, the immigrant  
20 may file a second petition, known as an "I-829 petition," to remove the conditions on the  
21 immigrant's residency status. If the I-829 petition demonstrates the immigrant investor  
22 has in fact invested the minimum amount of funds in the NCE; that the investment has  
23 created at least 10 jobs; and that other program requirements are satisfied, the petition is  
24 granted and the investor receives his or her "green card," or unconditional permanent  
25 residency.

26 11. A fundamental rule of the EB-5 program is that every dollar of each EB-5  
27 investor's capital contribution must be invested directly in the entity directly responsible  
28

1 for creating employment, which is known as the “job-creating enterprise,” or “JCE.”  
2 Further, the full investment must remain at risk and be used for job-creation purposes in  
3 that project. If any portion of the \$1 million (or \$500,000) capital contribution is used for  
4 a purpose other than the project, USCIS will deem the investment non-compliant with  
5 EB-5 regulations. In particular, no portion of the investor’s capital contribution may be  
6 used to pay regional center expenses, such as expenses associated with promoting the  
7 EB-5 investment. For example, in a well-known decision, USCIS ruled that an  
8 investment did not comply with EB-5 requirements because portions of the \$500,000  
9 capital contributions were used to pay sales commissions to EB-5 investment brokers.  
10 *See In re: Izummi*, USCIS Decision No. 3360 (July 13, 1998).

11 **B. The Defendant and Path America**

12 12. At all times material to the Information, defendant LOBSANG DARGEY  
13 was a real estate developer and a resident of Bellevue, Washington. DARGEY was the  
14 owner of several Washington-based real estate development companies including Path  
15 America LLC, Dargey Development LLC, and Dargey Enterprises LLC.

16 13. On June 28, 2010, DARGEY submitted to USCIS applications requesting  
17 that USCIS designate two regional centers. The first proposed regional center, which  
18 was called “Path America SnoCo LLC,” was intended to promote EB-5-financed projects  
19 in Snohomish County, Washington, particularly Everett, Washington. On August 8,  
20 2011, USCIS granted the application and designated Path America SnoCo as a regional  
21 center. The second proposed regional center, which was called “Path America KingCo  
22 LLC,” was intended to promote EB-5-financed projects in King County Washington.  
23 USCIS initially denied the application, but on June 6, 2013, it granted regional center  
24 status to Path America KingCo LLC. Path America LLC, Dargey Development LLC,  
25 Dargey Enterprises LLC, Path America SnoCo LLC, and Path America KingCo LLC are  
26 collectively referred to below as “the Dargey Entities.”  
27  
28

1 **C. The Everett Farmer's Market Project**

2 14. Following USCIS's approval of the Path America SnoCo regional center,  
3 DARGEY, with the assistance of others, began promoting a potential EB-5 project called  
4 Path America Farmer's Market ("PAFM"), a mixed-used building in Everett. To  
5 promote the investment, DARGEY and others prepared a Business Plan, an economic  
6 analysis, a Private Placement Memorandum, a Subscription Agreement, an Escrow  
7 Agreement, and a Partnership Agreement (collectively, the "PAFM Offering Materials").  
8 DARGEY distributed and caused to be distributed the PAFM Offering Materials to  
9 prospective immigrant investors with the intent that the investors would rely on them in  
10 making investment decisions, and would submit the materials to USCIS in support of  
11 their I-526 petitions.

12 15. The PAFM Offering Materials provided that a prospective immigrant  
13 investor could purchase a limited partnership interest in PAFM LP (the NCE) for  
14 \$545,000. The \$545,000 investment was made up of (a) a \$500,000 capital contribution  
15 to PAFM LP payable into escrow, and (b) a \$45,000 administrative fee payable to a  
16 DARGEY-affiliated entity in Hong Kong called Path America Asia Ltd. ("Path America  
17 Asia").

18 16. The PAFM Offering Materials represented that DARGEY would use each  
19 \$500,000 capital contribution to build the PAFM project in accordance with the Business  
20 Plan, and would use the \$45,000 administrative fee to pay sales commissions and other  
21 expenses of the regional center connected to the EB-5 securities offering. The PAFM  
22 Offering Materials also stated that Path America LLC would contribute \$2.5 million to  
23 the PAFM project, and in return would receive an 80% equity interest in PAFM LP.

24 17. DARGEY and a business associate established Path America Asia to  
25 promote the EB-5 investment to prospective Chinese investors. Path America Asia  
26 formed relationships with Chinese sales agents. Path America Asia and Path America  
27 LLC then entered into referral agreements with those agents. Under the referral

1 | agreements, Path America LLC agreed to pay commissions to the agents for each EB-5  
2 | investor the agents referred to the PAFM EB-5 investment. Path America Asia also  
3 | directly promoted PAFM to potential investors. DARGEY attended and participated in  
4 | presentations in China to prospective PAFM investors.

5 | 18. Between March 2012 and August 2014, DARGEY, through Path America  
6 | LLC and its employees and agents, raised \$43.6 million from 80 immigrant investors for  
7 | the PAFM project. This included \$40 million in capital contributions to be used  
8 | exclusively to construct the PAFM project, and \$3.6 million in administrative fees to  
9 | cover the costs of the offering, including sales commissions. The immigrant investors  
10 | invested these funds with DARGEY in reliance on the representations DARGEY made in  
11 | the PAFM Offering Materials, and on statements DARGEY and other Path America  
12 | representatives made directly to the immigrant investors during investor sales  
13 | presentations in China.

14 | 19. Between March 2012 and August 2014, the immigrant investors, with  
15 | DARGEY's participation and knowledge, submitted the PAFM Offering Materials to  
16 | USCIS in support of their I-526 petitions. In reliance on these materials, USCIS  
17 | approved the I-526 petitions of PAFM investors. After receiving their conditional  
18 | residency status, PAFM investors then moved to the United States based on their  
19 | expectation that they would ultimately receive unconditional permanent resident status.

20 | 20. In addition to the \$40 million in EB-5 financing, DARGEY solicited and  
21 | obtained a \$25 million construction loan from Voya Insurance and Annuity Company  
22 | ("Voya") to fund the remaining cost of building the PAFM project. As described more  
23 | fully below, DARGEY made materially false and fraudulent statements to Voya,  
24 | including providing Voya with an altered bank statement, to obtain this loan.

25 | **D. The Potala Tower Project**

26 | 21. In or about October 2013, following USCIS's designation of Path America  
27 | KingCo as a regional center, DARGEY began promoting an EB-5 project called the



1 “Potala Tower” project to potential immigrant investors. DARGEY and others created,  
2 and provided to the prospective investors, among other things, a Business Plan, an  
3 economic analysis, a Private Placement Memorandum, a Subscription Agreement, a  
4 Partnership Agreement, an Escrow Agreement, and a Construction Loan Agreement  
5 (collectively, the “Tower Offering Materials”).

6 22. The Tower Offering Materials provided that prospective EB-5 investors  
7 could purchase limited partnership interests in one of two proposed NCEs (named “Path  
8 America Tower, LP,” and “Path Tower Seattle, LP” or, collectively, the “Tower NCEs”)  
9 for \$545,000. The \$545,000 investment was made up of (a) a \$500,000 capital  
10 contribution payable into escrow; and (b) a \$45,000 administrative fee payable to Path  
11 America Asia in Hong Kong.

12 23. The Tower Offering Materials stated that, after the Tower NCEs received  
13 the immigrant investors’ capital contributions, the NCEs would loan these funds to Potala  
14 Tower Seattle LLC, a DARGEY-created entity, to construct the Tower project in  
15 accordance with the Business Plan. The Tower Offering Materials stated that DARGEY  
16 would use the immigrant investors’ \$45,000 administrative fees to pay commissions and  
17 other expenses related to the EB-5 offering.

18 24. Between February 2014 and August 2015, DARGEY raised approximately  
19 \$110 million from approximately 202 immigrant investors for the Tower project. This  
20 included approximately \$101 million in capital contributions and approximately \$9  
21 million in administrative fees. The immigrant investors invested these funds in reliance  
22 on the representations DARGEY made in the Tower Offering Materials and on  
23 statements DARGEY and other Path America representatives made to them during  
24 presentations in China.

25 25. Between February 2014 and August 2015, the immigrant investors, with  
26 DARGEY’s participation and knowledge, submitted the Tower Offering Materials to  
27 USCIS in support of their I-526 petitions. In addition, on July 10, 2015, DARGEY,  
28



1 through counsel, submitted the Tower Offering Materials to USCIS in support of a  
 2 request that USCIS grant “exemplar” approval to the Tower Project. In submitting this  
 3 request, DARGEY intended that USCIS would rely on the Tower Offering Materials and  
 4 determine that the project satisfied EB-5 program requirements, and would apply that  
 5 favorable determination as precedent in adjudicating the I-526 petitions of all of the  
 6 Tower Project investors.

7 26. In addition to the EB-5 financing, DARGEY solicited financing for the  
 8 Tower project from a Chinese investment company, Shanghai Binshun Investment  
 9 Management Company (“Binjiang”). On or about August 20, 2015, Binjiang, in reliance  
 10 on statements made by DARGEY about the financial condition of the Tower project,  
 11 invested \$30 million in the Tower project. Binjiang simultaneously invested an  
 12 additional \$30 million in two other DARGEY projects known as Path Othello and Path  
 13 Shoreline in reliance on statements made by DARGEY about the financial conditions of  
 14 those projects.

15 **COUNT 1**  
 16 **(Conspiracy to Commit Wire Fraud)**

17 **A. The Conspiracy and the Scheme to Defraud**

18 27. Beginning at a time unknown, but no later than March 2012, and continuing  
 19 through on or about August 24, 2015, at Bellevue, within the Western District of  
 20 Washington, and elsewhere, LOBSANG DARGEY, together with others known and  
 21 unknown, did conspire, confederate and agree, together and with each other, to commit  
 22 an offense against the United States. Specifically, LOBSANG DARGEY, together with  
 23 others known and unknown, with intent to defraud, knowingly devised a scheme and  
 24 artifice to defraud and to obtain money and property by means of materially false and  
 25 fraudulent pretenses, representations and promises. To execute and attempt to execute  
 26 the scheme and artifice to defraud, LOBSANG DARGEY knowingly transmitted and  
 27 caused to be transmitted by wire communication in interstate and foreign commerce,

1 | writings, signs, signals, pictures and sounds in violation of Title 18, United States Code,  
2 | Section 1343.

3 |       28.    The object of the conspiracy was to persuade investors and lenders to  
4 | entrust DARGEY with millions of dollars by falsely representing that DARGEY: (1)  
5 | would manage the EB-5 investors' investments in compliance with EB-5 program  
6 | requirements, and in a manner expected to result in the issuance of EB-5 immigrant visas  
7 | to the EB-5 investors, when in fact DARGEY knowingly managed the investments in  
8 | violation of EB-5 program rules and in a manner that could result in the denial of the  
9 | investors' visa applications; (2) would use the funds entrusted to him in accordance with  
10 | the PAFM and Tower Offering Materials for each respective project, when in fact  
11 | DARGEY used the funds contrary to the representations in those materials and for his  
12 | own personal benefit, and to the investors' detriment; and (3) would contribute millions  
13 | of dollars of his own funds to the projects, when in fact DARGEY made no financial  
14 | contribution to either project and lacked the financial means to do so. Having misused  
15 | investor funds, and having failed to contribute to the projects as promised, DARGEY and  
16 | others then attempted to compensate for the resulting funding deficits by soliciting  
17 | additional financing from Voya and Binjiang that was not disclosed to investors, and by  
18 | using fraudulent documents such as falsified bank statements and altered financial  
19 | statements to induce those companies to provide financing to DARGEY.

20 | **B.    False Representations Regarding EB-5 Compliance**

21 |       29.    It was part of the scheme and artifice to defraud that, in soliciting  
22 | prospective EB-5 investors, DARGEY represented that DARGEY would manage the  
23 | projects in accordance with EB-5 rules and in a manner that would result in the approval  
24 | of investors' EB-5 petitions. DARGEY knew that the immigrant investors' primary  
25 | purpose in investing in both projects was to obtain green cards through the EB-5  
26 | program, and DARGEY encouraged investors to participate for this purpose.

30. For example, in sales presentations to prospective Chinese investors, DARGEY represented, and caused others to represent, that the projects came with a “green card guarantee.” Similarly, materials distributed to investors for the PAFM project represented that Path America SnoCo investment vehicles would be “specifically designed to meet the applicant’s Form I-829 Petition for an Alien Entrepreneur to Remove Conditions requirements.” In addition, DARGEY promoted the investments through a website promising to “assure that all EB-5 requirements are met.” The Path America Tower LP Limited Partnership Agreement represented that DARGEY would “operate the Company in a manner designed to comply with legal and policy requirements of the EB-5 program,” and that he would “follow the business plan for the project as submitted to USCIS.”

31. In fact, as detailed below, DARGEY knowingly used the EB-5 investors’ capital contributions for purposes other than those described in the PAFM and Tower Offering Materials, otherwise knowingly managed the investments contrary to EB-5 requirements, and caused the projects to materially depart from the business plans in numerous respects without informing investors or USCIS. DARGEY’s conduct could result in the denial of the investors’ EB-5 visa petitions.

**C. Misuse of Capital Contributions to Pay Commissions and Syndication Costs**

32. It was further part of the scheme and artifice to defraud that DARGEY falsely represented to the immigrant investors and USCIS that he would not use any portion of investors’ \$500,000 capital contributions to pay sales agent commissions or other expenses associated with recruiting EB-5 investors.

33. For example, the Tower Private Placement Memorandum (“Tower PPM”) stated that “commissions or other fees shall not be payable out of the proceeds of the Capital Contributions.” Similarly, the PAFM Private Placement Memorandum (“PAFM PPM”) stated that “the [\$45,000] administrative fee shall be used exclusively to pay, where applicable, any finder or similar agency introduction fee.” The PAFM Business

1 Plan budget and the Tower Business Plan budget made no allowance for any portion of  
2 EB-5 capital contributions to be used to pay commissions or other offering expenses.

3 34. Contrary to his representations, DARGEY secretly used investors' capital  
4 contributions to pay commissions and other EB-investment offering expenses that  
5 DARGEY classified as "syndication costs." The "syndication costs" included such  
6 things as a \$1.4 million payment towards the purchase of a Bellevue home for the  
7 manager of Path America Asia, a \$31,000 jewelry bill, and a \$1,300 dinner bill, all of  
8 which were associated with enticing new investors to invest in the projects. With respect  
9 to PAFM, DARGEY paid approximately \$3.7 million in sales commissions and  
10 syndication costs out of PAFM investor capital contributions in addition to the \$45,000  
11 fee paid by each investor. With respect to the Tower, DARGEY paid approximately \$7.8  
12 million in commissions and syndication costs out of Tower investors' capital  
13 contributions in addition to the \$45,000 fee paid by each investor.

14 35. DARGEY knew these payments were contrary to his representations to the  
15 immigrant investors and USCIS, and further knew that by paying these offering expenses  
16 with capital contributions, the immigrant investors could be rendered ineligible for EB-5  
17 visas. Further, DARGEY provided investors with PAFM and Tower Offering Materials  
18 falsely representing that capital contributions were not being used for commissions or  
19 syndication costs. In providing these materials to investors, DARGEY knew and  
20 intended that the investors would provide the materials to USCIS in support of their I-526  
21 petitions.

22 36. It was further part of the scheme and artifice to defraud that, even after  
23 using millions of dollars of capital contributions to pay sales commissions, DARGEY  
24 submitted and caused to be submitted to USCIS materials representing that he had not  
25 done so. For example, DARGEY caused counsel to Path America to prepare a letter for  
26 submission to USCIS in support of each Tower investor's I-526 petition representing that  
27 "no portion of the investors' contributions has been or will be applied toward legal fees  
28

1 or administrative/marketing costs of [the Tower], which are paid from the *separate*  
2 \$45,000 administrative fee.” (Emphasis in original.) Similarly, on or about July 10,  
3 2015, DARGEY signed and caused to be submitted to USCIS a filing that falsely  
4 represented that “no portion of the investors’ contributions has been or will be applied  
5 toward legal fees or administrative/marketing costs”; that “none of the investors’ capital  
6 contributions will be used” for EB-5 offering expenses; and that all offering expenses  
7 would be paid from non-EB-5 sources.

8 **D. Secret Diversions of EB-5 Investments to Other Projects**

9 37. It was further part of the scheme and artifice to defraud that DARGEY  
10 represented to investors and USCIS that the investors’ capital contributions would be  
11 used exclusively to develop the respective EB-5 projects. For example, the PAFM PPM  
12 stated that “the proceeds of the Offering will be used by the Partnership to invest in the  
13 Projects described herein.” Similarly, the Tower PPM stated that the capital  
14 contributions “will be used to finance the construction, marketing and operations,  
15 financing, improvement and sale of the Project.” In addition, both projects’ budgets  
16 represented that 100% of the EB-5 capital would be expended on specific items related to  
17 the actual construction and development of the PAFM and Tower projects.

18 38. Contrary to his representations to investors and USCIS, and beginning with  
19 his receipt of the first PAFM capital contribution in April 2012, DARGEY secretly  
20 diverted a portion of the investors’ capital contributions to DARGEY’s other non EB-5  
21 real estate projects. Of the capital contributions the PAFM immigrant investors entrusted  
22 to DARGEY to construct the PAFM, DARGEY and others secretly diverted  
23 approximately \$1.6 million to DARGEY’s personal Kirkland project, \$550,000 to his  
24 personal Potlatch Village Everett project, and \$270,000 to another DARGEY project in  
25 Seattle known as Path Othello (“Othello”). None of these projects were approved EB-5  
26 projects.  
27  
28

1       39. Similarly, of the funds that immigrant investors entrusted to DARGEY to  
2 build the Tower project, DARGEY secretly diverted over \$16 million to other projects.  
3 This included approximately \$7.7 million diverted to a proposed DARGEY project in  
4 Shoreline known as Potala Shoreline ("Shoreline"); \$6.4 million to DARGEY's Kirkland  
5 project, and \$1 million to DARGEY's proposed Othello project. In addition, DARGEY  
6 diverted \$2.5 million from the Tower project to the PAFM project to make up for funding  
7 deficits in the PAFM project resulting from DARGEY's misuse of funds and failure to  
8 make equity contributions.

9       40. DARGEY knew that his secret diversions could render the EB-5 investors  
10 ineligible for EB-5 visas because significant portions of their \$500,000 investments had  
11 been used for purposes other than the EB-5 projects in which they had invested.  
12 However, DARGEY never disclosed to investors or USCIS that he had misused the funds  
13 in this manner.

14       41. It was a further part of the scheme and artifice to defraud that, on or about  
15 February 27, 2015, to make these diversions appear legitimate, DARGEY simultaneously  
16 executed eight promissory notes purporting to memorialize debt obligations of the  
17 entities that had received the secret diversions. The promissory notes were not secured,  
18 did not provide for any interest for the period between the time DARGEY had diverted  
19 the funds and the date of the note (which in some cases was nearly three years), and  
20 provided for future interest at the submarket rate of 3% per year. Despite the supposed  
21 interest obligations on the promissory notes, DARGEY did not cause any interest to be  
22 paid or accrued on accounting documents for PAFM, the Tower Project, or the obligors  
23 on the promissory notes after he signed the promissory notes. Furthermore, after  
24 executing the promissory notes, DARGEY continued to divert additional funds from the  
25 EB-5 projects to the obligors of the notes without amending the notes or issuing new  
26 notes from those obligors to reflect the additional diversions.



**E. Misrepresentations Regarding Promised Equity Contributions**

42. It was a further part of the scheme and artifice to defraud that DARGEY falsely represented in the PAFM and Tower Offering Materials that DARGEY, through Path America LLC, would make cash contributions of millions of dollars to the projects when, in fact, neither DARGEY nor Path America had the means or intention to do so.

43. With respect to PAFM, DARGEY represented in the PAFM Offering Materials, including the Business Plan, that Path America LLC would make a \$2.5 million cash contribution to the project in the first ten months, and that Everett Hospitality, a company DARGEY owned in part, would make an additional \$3 million equity contribution over the first 16 months of the project. In fact, neither Path America nor Everett Hospitality ever made any cash or other financial contribution to the PAFM project.

44. DARGEY never disclosed to the immigrant investors or to USCIS that he had failed to make these contributions to PAFM. To the contrary, DARGEY continued to distribute the PAFM Offering Materials to investors, and caused investors to submit the PAFM Offering Materials to USCIS, after Path America LLC and Everett Hospitality had failed to make the promised equity contributions.

45. With respect to the Tower Project, DARGEY represented in the Tower Offering Materials that Path America LLC would make a \$30 million equity contribution to the Tower project. The Tower Business Plan stated that DARGEY, through Path America LLC, would contribute \$14.2 million to purchase the land for the Tower project, and that Path America would contribute the remaining \$15.8 million by January 2015. In fact, Path America did not buy the land for the Tower project and never made any cash contribution to the Tower project. Instead of using \$14.2 million of Path America funds to purchase the land as promised, DARGEY caused Potala Tower Seattle LLC to finance the purchase through seller financing, resulting in millions of dollars of debt for the project not disclosed in the Tower Offering Materials to the detriment of immigrant



1 investors. DARGEY later paid off this debt using a portion of the immigrant investors'  
2 capital contributions.

3 46. DARGEY never disclosed to investors or USCIS that he had failed to make  
4 the promised \$30 million equity contribution. Further, on or about July 10, 2015,  
5 DARGEY filed with USCIS the Tower Offering Materials representing that Path  
6 America would make the \$30 million equity contribution, when DARGEY knew that  
7 Path America lacked the means to do so. DARGEY'S failure to contribute the equity  
8 promised in the PAFM and Tower Offering Materials represented a material departure  
9 from those materials that, if discovered by USCIS, could result in the denial of investors'  
10 I-526 petitions.

11 **F. DARGEY'S Fraudulent Inducement of the Voya Loans**

12 **1. Inducement of the \$25 Million PAFM Loan**

13 47. It was further part of the scheme and artifice to defraud that, to make up the  
14 funding deficit resulting from DARGEY's misuse of PAFM project funds and failure to  
15 contribute equity, DARGEY incurred significantly more construction debt than  
16 represented to the immigrant investors to complete the PAFM project.

17 48. Specifically, in or about November 2014, DARGEY incurred \$25 million  
18 dollars of secured debt on behalf of PAFM LP in the form of a construction loan from  
19 Voya, even though the PAFM Offering Documents represented that the project would  
20 incur only \$13.3 million in construction debt. The increased debt obligation materially  
21 diminished the value of immigrant investors' equity investments in PAFM LP and  
22 represented a material departure from the PAFM Offering Materials that, if discovered by  
23 USCIS, could result in USCIS denying investors' I-526 petitions. DARGEY never  
24 disclosed to the immigrant investors or USCIS that the amount of construction debt  
25 incurred was nearly double the amount of debt stated in the PAFM Offering Materials.

26 49. It was further part of the scheme and artifice to defraud that DARGEY  
27 made material misrepresentations to Voya and its agents about DARGEY's personal  
28

1 financial condition to induce Voya to make the \$25 million loan to PAFM. As a  
2 condition of the loan, Voya required that DARGEY personally guarantee the \$25 million  
3 loan through construction and stabilization of the project. To verify that DARGEY had  
4 the financial means to satisfy the personal guarantee, Voya required DARGEY to  
5 disclose his personal financial information, particularly information concerning his liquid  
6 assets. DARGEY knew he did not have sufficient liquid assets to meet Voya's  
7 requirements, and therefore, made numerous false statements about the value of his liquid  
8 assets to deceive Voya into funding the construction loan.

9 50. Specifically, DARGEY knowingly provided Voya and its loan broker,  
10 Newmark Realty Capital ("Newmark"), with a false and fraudulent bank statement for  
11 Path America Asia's Hong Kong bank account at Hong Kong Shanghai Bank  
12 Corporation ("HSBC"). DARGEY altered or caused to be altered the HSBC statement to  
13 make it appear that the account balance was in excess of \$9.6 million, when in fact, as  
14 DARGEY knew, the true value of the account was less than \$450,000. DARGEY also  
15 falsely represented to Newmark and Voya that the balance in the account had never fallen  
16 below \$2 million or \$3 million.

17 51. It was further part of the scheme and artifice to defraud that, after obtaining  
18 the \$25 million loan for PAFM, DARGEY provided fraudulent PAFM financial  
19 statements to Newmark and Voya to conceal the fact that he had secretly diverted PAFM  
20 funds to other DARGEY projects. As a term of the loan agreement, DARGEY was  
21 required to provide quarterly financial statements to Voya and Newmark following the  
22 closing of the loan. PAFM's financial statements contained entries revealing that PAFM  
23 had diverted millions of dollars to other entities, including the Kirkland and Othello  
24 projects. On or about April 28, 2015, and July 29, 2015, DARGEY directed a Path  
25 America employee to alter the PAFM financial statements by removing the entries that  
26 disclosed the secret diversions. At DARGEY's direction, the Path America employee  
27

1 then affixed DARGEY's signature to the fraudulent financial statements and sent them to  
2 Newmark.

3 **2. Attempted Inducement of the \$66 Million Tower Loan**

4 52. It was further part of the scheme and artifice to defraud that, to make up the  
5 funding deficit resulting from his misuse of Tower project funds and his failure to  
6 contribute equity to the Tower project, DARGEY attempted to obtain a \$66 million  
7 secured loan from Voya, when the Tower Offering Materials had represented that the  
8 project would incur only \$36.6 million in construction loan debt. The increased debt  
9 obligation would have materially increased the risk of default by Potlatch Tower Seattle  
10 LLC on its debt to the NCEs (thus resulting in financial losses to the immigrant  
11 investors), and would have represented a material change that could cause USCIS to deny  
12 investors' I-526 petitions.

13 53. It was a further part of the scheme and artifice to defraud that DARGEY  
14 provided materially false financial information to Voya in an effort to induce Voya to  
15 loan \$66 million to the Tower Project. Specifically, on or about July 27, 2015, DARGEY  
16 sent Voya a false and fraudulent Path America Asia HSBC bank statement that had been  
17 altered at DARGEY's direction to make it appear as if the account contained \$8.2 million  
18 in liquid assets, when in fact the account balance was less than \$400,000. However,  
19 DARGEY was ultimately unable to obtain the loan because the Securities and Exchange  
20 Commission obtained injunctive relief prior to the closing of the loan.

21 **G. DARGEY's Fraudulent Inducement of the Binjiang Investments in the**  
22 **Tower, Shoreline, and Othello Projects**

23 **1. Concealment of the Secret Diversions**

24 54. It was a further part of the scheme and artifice to defraud that, to further  
25 make up the funding shortfall caused by DARGEY's misuse of Tower project funds and  
26 failure to contribute equity to that project, DARGEY obtained \$30 million of outside  
27 equity financing not contemplated or disclosed by the Tower Offering Materials from  
28

1 Binjiang, a Chinese investment company. DARGEY did not disclose Binjiang's  
2 investment to the immigrant investors or USCIS.

3 55. It was a further part of the scheme and artifice to defraud that, to obtain the  
4 Binjiang investment, DARGEY altered the Potala Tower Seattle LLC balance sheet to  
5 conceal from Binjiang the fact that DARGEY had diverted millions of dollars of Tower  
6 investor funds to unauthorized uses.

7 56. On or about June 4, 2015, a representative of Deloitte Touche Tomhatsu  
8 Ltd. ("Deloitte"), which was performing due diligence on behalf of Binjiang, requested  
9 that DARGEY produce a Potala Tower Seattle LLC balance sheet. At that time, certain  
10 entries on the Potala Tower Seattle LLC balance sheet revealed that DARGEY had  
11 secretly diverted approximately \$16.8 million in investor funds to unauthorized uses,  
12 including the diversions to Kirkland, PAFM, Shoreline, and Othello described above.  
13 Specifically, these entries (the "due from entries") stated that millions of dollars were due  
14 to Potala Tower Seattle LLC from DARGEY's Kirkland, PAFM, Shoreline and Othello  
15 projects.

16 57. Shortly after receiving Deloitte's request for the Potala Tower Seattle LLC  
17 balance sheet, and to conceal the fact that he had misused investor funds, DARGEY  
18 directed Path America representatives to falsify Tower accounting records so that the  
19 "due from" entries would appear not on the Potala Tower Seattle LLC balance sheet  
20 (which Deloitte had requested) but instead on the balance sheet of Path America Tower  
21 LP, (which Deloitte had not requested). The movement of the "due from" entries to Path  
22 America Tower LP was false and misleading because Potala Tower Seattle LLC, not Path  
23 America Tower LP, had made the secret diversion payments. Indeed, as discussed above,  
24 just four months earlier, DARGEY had executed promissory notes reflecting that the  
25 debts were due to Potala Tower Seattle, LLC.

1           **2. False Representations Regarding Tower Equity**

2           58. It was a further part of the scheme and artifice to defraud that DARGEY  
3 falsely represented to Binjiang that the Dargey Entities had made millions of dollars in  
4 equity contributions to the Tower project, when in fact they had not. Binjiang required,  
5 in exchange for its agreement to invest in the Tower project, that Path America contribute  
6 no less than \$15 million to the project. During negotiations, DARGEY falsely  
7 represented to Binjiang that he had previously paid \$12 million to purchase the land for  
8 the project, when, in fact, DARGEY had made no contribution to that purchase.  
9 DARGEY and Binjiang agreed that Path America would make an additional \$3 million  
10 cash contribution to the project prior to the deal closing.

11           59. The Tower Development Agreement provided that Path America LLC  
12 would be reimbursed for “costs and expenses reasonably incurred” in connection with  
13 developing the Tower project. The Tower budget projected that this would amount to  
14 \$750,000 over the life of the project. As of June 7, 2015, Path America LLC had already  
15 been reimbursed \$912,578 for direct overhead expenses actually incurred on behalf of the  
16 project.

17           60. On or about June 8, 2015, at DARGEY’s direction, a Path America LLC  
18 employee made a journal entry reflecting that DARGEY had incurred an additional \$3.7  
19 million in direct overhead expenses on behalf of Potala Tower Seattle LLC for which  
20 DARGEY not been reimbursed. In fact, as DARGEY well knew, the \$3.7 million figure  
21 was entirely fabricated, and had no relation to any expenses actually incurred by  
22 DARGEY or the Dargey Entities. DARGEY then directed the employee to convert the  
23 fictitious \$3.7 million reimbursement obligation into an equity credit in DARGEY’s  
24 favor. These entries made it appear from the Potala Tower Seattle LLC financial  
25 statements as if DARGEY had made the \$3 million cash contribution to the Tower  
26 project as agreed with Binjiang, when in fact he had made no contribution at all. On or  
27 about June 13, 2015, DARGEY caused a Path America employee to email the resulting

1 altered and fraudulent Potala Tower Seattle LLC balance sheet to the Deloitte  
2 representative in China.

3 **3. False Representations Regarding Shoreline Equity**

4 61. It was a further part of the scheme and artifice to defraud that DARGEY  
5 solicited and obtained \$15 million investments from Binjiang in each of two additional  
6 DARGEY developments, Shoreline and Othello, for a total of \$30 million. DARGEY  
7 required Binjiang to invest in Shoreline and Othello as a condition to Binjiang investing  
8 in the Tower project. DARGEY intended to divert portions of the proceeds of Binjiang's  
9 Shoreline and Othello investments to the Tower project to make up for the shortfalls  
10 resulting from DARGEY's misuse of Tower funds and his failure to contribute equity to  
11 the Tower project.

12 62. In connection with Binjiang's investment in Shoreline, DARGEY falsely  
13 represented to Binjiang that the Dargey Entities had contributed \$8.5 million to the  
14 Shoreline project. The Binjiang Investment Agreement for Shoreline required DARGEY  
15 to contribute \$5 million in cash to the Shoreline project. DARGEY falsely represented to  
16 Binjiang that he had already contributed \$8.5 million to the project, when in fact the only  
17 funding of the project consisted of the \$7.5 million in Tower EB-5 investor funds that  
18 DARGEY had fraudulently diverted to the Shoreline project.

19 63. In addition, on or about June 8 and 9, 2015, a Path America employee, at  
20 DARGEY's direction, made entries in the Shoreline project's accounting system that  
21 made it appear as if DARGEY or the Dargey Entities had (1) incurred and paid \$500,000  
22 in unreimbursed direct overhead expenses on behalf of the Shoreline project, when in fact  
23 these overhead expenses had not been incurred or paid; and (2) earned \$1 million in  
24 developer fees, when in fact the Dargey entities were not entitled to, and had not earned,  
25 any developer fees. At DARGEY's direction, the employee then converted those  
26 fictitious payment obligations to the Dargey entities into equity credits in favor of  
27 DARGEY. These entries made Shoreline's balance sheet appear as if DARGEY had



1 contributed \$8.9 million to the project, when in fact he had made no financial  
2 contribution at all. DARGEY caused the false and fraudulent Shoreline balance sheet to  
3 be emailed to Deloitte in China on or about June 13, 2015.

4 64. DARGEY intended and expected that, as a result of his false claim that he  
5 had paid \$3.5 million in equity more than the \$5 million required under his agreement  
6 with Binjiang, DARGEY would under the terms of his agreement with Binjiang  
7 immediately receive a \$3.5 million payment from Binjiang to “reimburse” him for his  
8 “excess” equity contribution, when in fact DARGEY had made no equity contribution at  
9 all.

10 **4. False Representations Regarding Othello Equity**

11 65. It was a further part of the scheme and artifice to defraud that DARGEY  
12 induced Binjiang to make an additional \$15 million investment in the Othello project by  
13 falsely representing that the Dargey Entities had contributed \$5.3 million to that project.  
14 The Binjiang Investment Agreement for Othello required DARGEY to make a \$5 million  
15 cash contribution to the Othello project. DARGEY falsely represented to Binjiang that  
16 he had already contributed \$3 million to the project, when in fact the only funding of the  
17 project consisted of the \$1 million in Tower EB-5 investor funds and the \$270,000 in  
18 PAFM EB-5 investor funds that DARGEY had previously fraudulently diverted to the  
19 Othello project.

20 66. In addition, on or about June 8 and 9, 2015, a Path America employee, at  
21 defendant’s direction, recorded entries in the Othello project’s accounting system that  
22 made it appear as if DARGEY or the Dargey Entities had (1) incurred and paid \$1.5  
23 million in direct overhead expenses on behalf of the project, when in fact these overhead  
24 expenses had not been incurred or paid; and (2) earned \$2.5 million in developer fees,  
25 when in fact the Dargey entities had not earned, and were not entitled to, any developer  
26 fees. At DARGEY’s direction, the employee then converted those fictitious payment  
27 obligations to the Dargey entities into equity credits in favor of DARGEY, making it



1 appear from the balance sheet as if DARGEY had made the equity payments required by  
2 the Othello Investment Agreement, when in fact he had made no payments at all.  
3 DARGEY caused the false and fraudulent Othello balance sheet to be emailed to Deloitte  
4 in China on June 13, 2015.

5 **H. Overt acts**

6 67. In furtherance of the conspiracy and to effect its objects, within the Western  
7 District of Washington and elsewhere, LOBSANG DARGEY, together with other  
8 individuals, committed and caused to be committed, among others, the following overt  
9 acts, which are representative of the various overt acts undertaken in furtherance of the  
10 fraud:

11 a. On or about April 2, 2013, LOBSANG DARGEY caused \$200,000  
12 of the capital contribution of D.L., a Path America Farmer's Market investor, to be used  
13 to pay expenses of LOBSANG DARGEY's Kirkland project by means of an interstate  
and foreign wire transmission;

14 b. On or about August 19, 2014, LOBSANG DARGEY caused a  
15 falsified HSBC bank statement to be transmitted to Newmark Realty Capital by means of  
an interstate and foreign wire transmission;

16 c. On or about August 20, 2014, LOBSANG DARGEY caused  
17 \$325,000 of the capital contributions of Path America Farmer's Market investors to be  
18 used to pay agent sales commissions by means of an interstate and foreign wire  
transmission;

19 d. On or about November 3, 2014, LOBSANG DARGEY caused  
20 \$1,402,454 of the capital contributions of Potala Tower investors to be applied toward the  
21 purchase of a residence for an officer of Path America Asia by means of an interstate and  
foreign wire transmission;

22 e. On or about November 14, 2014, LOBSANG DARGEY caused  
23 \$90,000 of the capital contributions of Potala Tower investors to be used to pay  
24 syndication costs incurred by Path America Asia by means of an interstate and foreign  
wire transmission;

25 f. On or about May 13, 2015, LOBSANG DARGEY caused  
26 \$6,000,000 of the capital contributions of Potala Tower investors to be used to purchase  
27 land for LOBSANG DARGEY's Shoreline project by means of an interstate and foreign  
wire transmission; and

1           g. On or about June 13, 2015, LOBSANG DARGEY caused the  
2 transmission of an altered Potala Tower Seattle balance sheet to Deloitte Touche  
3 Tomhatsu, which was conducting due diligence on behalf of Shanghai Binshun  
4 Investment Management Company by means of an interstate and foreign wire  
5 transmission.

6 All in violation of Title 18, United States Code, Section 371.

## 7 **COUNT 2**

### 8 **(Scheme to Conceal Information From the United States)**

9 68. Paragraphs 1 through 67 are hereby incorporated by reference as if fully set  
10 forth herein.

11 69. Beginning at a time unknown, but no later than March 2012, and continuing  
12 through on or about August 24, 2015, at Bellevue, within the Western District of  
13 Washington, and elsewhere, LOBSANG DARGEY, in a matter within the jurisdiction of  
14 the United States Department of Homeland Security, United States Citizenship and  
15 Immigration Services, did falsify, conceal, and cover up by any trick, scheme, artifice and  
16 device material facts, to wit, the facts that:

17 a. LOBSANG DARGEY had secretly diverted capital contributions of  
18 EB-5 investors in the Path America Farmer's Market project to other LOBSANG  
19 DARGEY projects, including the Kirkland, Potala Village Everett, Tower, and Othello  
20 projects;

21 b. LOBSANG DARGEY had secretly diverted capital contributions of  
22 EB-5 investors in the Path America Farmer's Market project to pay agent sales  
23 commissions and other expenses associated with promoting the Path America Farmer's  
24 Market EB-5 investment;

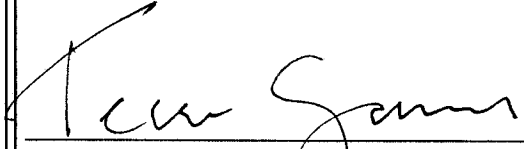
25 c. LOBSANG DARGEY had secretly diverted capital contributions of  
26 EB-5 investors in the Potala Tower Project to other LOBSANG DARGEY projects,  
27 including the Kirkland, Potala Village Everett, PAFM, and Othello projects; and  
28 ///


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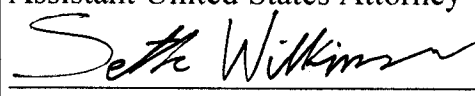
1 d. LOBSANG DARGEY had secretly diverted capital contributions of  
2 EB-5 investors in the Potala Tower Project to pay agent sales commissions and other  
3 expenses associated with promoting the Path America Tower EB-5 investment.

4 All in violation of Title 18, United States Code, Section 1001(a)(1) and Section 2.

5  
6   
7 ANNETTE L. HAYES  
8 United States Attorney

9   
10 ANDREW FRIEDMAN  
11 Assistant United States Attorney

12   
13 JUSTIN W. ARNOLD  
14 Assistant United States Attorney

15   
16 SETH WILKINSON  
17 Assistant United States Attorney